MT LEGISLATIVE HISTORY

Chapter 194 1973

Bill H 239 S _____ Original bill & hist. ___C

H. Committee on judiciary		S. Committee on judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/26	✓C	_____	___C
_____	___C	_____	___C
_____	___C	NO MINUTES TAKEN; _____	___C
Date Out 1/26	✓C	_____	___C

BE CONCURRED IN.

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

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January 26, 1973

JUDICIARY COMMITTEE

The fourteenth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Friday, January 26, 1973. Representative Hall, Chairman, presided. All members were present.

This meeting resulted in strictly hearing on the bills. Committee meeting for consideration of bills was called later in day by Chairman Hall due to large number of witnesses testifying on these bills.

HOUSE BILL 267 Representative Yardley, chief sponsor, summarized and then introduced Mr. Wesley W. Wertz of the Montana Bankers Association to testify in support of bill. No other proponents and no opponents. Chairman Hall closed hearing following discussion.

HOUSE BILL 277 Representative Towe, chief sponsor, summarized this bill which is an act relating to the apprehension and return of children who have left a juvenile facility of the department of Institutions without permission by defining the term 'juvenile facility of the department.'. Mr. John G. Thomas of Department of Institutions appeared to testify on behalf of bill at the request of his director. Mr. Thomas urged support of the bill, No other opponents or proponents. Chairman Hall closed the hearing and stated consideration of bill would be later in day.

HOUSE BILL 269 Representative Bell, chief sponsor, summarized this bill relating to the confidentiality of automobile accident reports filed pursuant to the uniform accident reporting act by providing that such reports may be examined by certain persons. Captain Heath representing the Montana Highway Patrol testified in opposition to bill. No other opponents and no proponents. Discussion ensued. Chairman Hall closed hearing and stated bill would be taken up for consideration later.

HOUSE BILLS 237, 238 and 239 All three bills are sponsored by Representative Colberg and pertain to problems of eminent domain and the mining of coal. Chairman Hall stated he would allow twenty minutes for the proponents, fifteen minutes for the opponents and five minutes for rebuttal. Representative Colberg stated House Bill 356, not scheduled for hearing today, deals with problem in similar vein.

Testimony, both written and verbal, in support of HOuse Bills 237, 238 and 239 was given by the following:

1) Mr. Don Bailey, representing himself, from Colstrip, Mt.
2) Kit Muller, representing Northern Plains Resource Center.
3) Representative John Walborn, Hardin, Big Horn County
4) John Redding, Sarpy Creek, Hysham, Mt., representing Sarpy Creek Protective Association.

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5) Robert R. Tully, Roundup, Mt., representing Bull Mountain Landowners.
6) Allen F. Withers, Chairman, Northern Plains Resource Council, Billings, Mt.
7) Ellen Pfister Withers, Billings, Mt., representing Bull Mountain Landowners.
8) Lena S. VanDriest - no form filled out.

Opponents to House Bills 237, 238 and 239 were:
1) P. L. McDonald, representing ACM, Butte.
2) J. Bob Corette, representing Montana Power.
3) Cal Robinson, Kalispell, Decker Coal Company.

Also testifying on these bills was Mr. Geoffrey L. Brazier, Western Montana Mining Association.

Following testimony five minutes was allowed for rebuttal which actually turned into seven minutes for rebuttal.

Chairman Hall then opened the committee for questioning of witnesses. Considerable discussion ensued.

Chairman Hall called a meeting of the Judiciary Committee to be held today upon adjournment of the House to take action on the bills presently before committee.

Chairman Hall moved to adjourn and Representative Lucas seconded motion. Passed unanimously and meeting adjourned at 10:45 a.m.

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January 26, 1973

EXECUTIVE SESSION,

JUDICIARY COMMITTEE

HOUSE BILL 267 Representative Yardley moved DO PASS. Representative Towe seconded. Passed unanimously.

HOUSE BILL 269 Chairman Hall read title of bill and stated Representative Bell was chief sponsor. Representative McKittrick moved DO PASS. Representative Towe seconded motion. Roll call vote was taken and motion DO PASS failed by a seven to six vote with Representatives Hall, Yardley, Baeth, Brown, Greely and Warfield voting no. Motion to amend bill on page 2, section 1, subsection (b), line 9, after the word "that" by deleting the word "such" and inserting in lieu thereof the word "the", and in same line amend by deleting the word "reports" and inserting in lieu thereof the word "report" and be further amended on page 2, section 1, subsection (b), line 9, after the word "information" by adding the new material "filed by law enforcement personnel as required by this act". The Chair divided this question on amending. Both amendments passed unanimously. The motion DO PASS AS AMENDED carried with Representative Greely voting no.

HOUSE BILL 277 Representative Towe moved to amend on page 2, line 1, by striking the words "Boulder River School and Hospital" and "Eastmont Training School". Representative Greely seconded. Discussion ensued with Representative Marbut objecting to bill. Roll call vote taken and motion to amend failed with Representatives Baeth, Baucus, Bell, Marbut and Towe voting yes.

Representative Towe moved DO PASS. Representative Lucas seconded. Motion DO PASS carried with Representative Marbut voting no.

HOUSE BILL 739 Representative Towe moved bill be amended on page 2, section 1, line 18 after the parenthesis and number "(3)" by deleting the word "in" and inserting in lieu thereof the new material, "The limitation on annual salary set forth in subsection (2) above does not apply to the chief probation officer in", and also be amended on page 2, section 1, subsection (3), lines 19, 20, 21, 22 and 23 after the word "first" by deleting "class, the maximum salary of the chief probation officer shall be the average salary received by the elementary school principals in the counties of the first class contained within the judicial district. Provided, however, that the chief" and inserting in lieu thereof the new material "class. Provided, however, that such", and be further amended on page 2, section 1, subsection (3), line 25 after the word "and" by inserting the new material "had three (3) years experience in behavorial sciences. No such salary shall be set in excess of an amount approved by the county commissioners of counties involved." and then strike remaining language in that paragraph (e.g.) pages 2 and 3, lines 25, 1, 2, 3, 4, 5, 6 and 7.

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Representative Towe stated that with these amendments have eliminated any reference to school principals. Representative Yardley seconded motion. Motion to amend carried unanimously.

Representative Lucas moved DO PASS AS AMENDED. Representative Greely seconded. Motion carried unanimously.

HOUSE BILL 238 Chairman Hall stated committee would consider this bill first as it is the most complex and difficult of the three "eminent domain" bills.

Representative Towe moved DO PASS. Representative Baucus seconded. Representative Lucas stated he is opposed to all three bills. Discussion by committee members followed on declaring minerals as no longer of public use, possibility of drying up sources of money coming into Eastern Montana as well as industry that could come in as a result.

Representative Greely made substitute motion that Representative Towe's proposed amendment be used. Representative Baeth seconded. Representative Greely withdrew his motion and committee reverted to original motion DO PASS.

Representative Towe moved to amend by changing bill to deal with coal only. Representative Baucus seconded.

Roll call vote taken on motion DO PASS. Motion failed with Representatives Yardley, Baeth, Bell, Brown, Greely, Lucas and Warfield voting no.

Motion to amend bill carried unanimously. Representative Towe moved bill be further amended on page 4, section 2, line 7 by deleting all of section 2. Representative Bell seconded. Motion to amend carried with Representative McKittrick voting no.

Representative Towe moved House Bill 238 DO PASS AS AMENDED. Representative Brown seconded. Motion carried unanimously.

HOUSE BILL 237 Chairman Hall stated he would exercise prerogative of the chair as a member and that he was concerned about the language of the bill itself. Representative Hall read his draft of amendment to committee and stated he does not intend to change the law. Discussion followed.

Representative Towe moved to strike all of bill after the enabling clause and insert Representative Hall's amendment in lieu thereof with further addition of severability clause. Representative Greely seconded. Motion to consider Representative Hall's proposed amendment carried with Representatives Hall, Baucus, Marbut, McKittrick, Roberts and Towe voting yes. Representative Baeth passed but voted yes to break the tie vote.

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Motion to accept Representative Hall's amendment failed with Representatives Baeth, Bell, Brown, Greely, Lucas and Warfield voting no. Representative Yardley passed but voted no to break the tie.

Representative Greely moved to amend Representative Hall's amendment by striking a couple lines in order that amendment would read as follows:

"A conveyance grant, contract for deed, or deed shall not create, whether by way of transfer to a grantee or by way of reservation to a grantor, or otherwise, or at all, a burden or servitude upon, or interest in or under, the land affected for strip mining or open pit mining (i.c. etc.) unless that conveyance, grant, contract or deed shall expressly create such burden, servitude or interest. No such burden, servitude or interest may be created, whether by transfer or reservation thereof, or otherwise, or at all by lease, agreement or other instrument affecting an interest in personalty or less than fee simple unless such burden, servitude or interest shall be expressly created by such lease, agreement or instrument.

"Section 2. If any provision of this act or the application thereof to any person or transaction is held unconstitutional, the remainder of this act and the application of such provision to other persons or transactions shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision."

the above amendment inserting after the words "Section 1." after having deleted lines 12, 13, 14, 15, 16, 17, 18, 19 and 20 of proposed bill. Representative Towe seconded motion to amend, and AS AMENDED DO PASS. Motion carried with Representatives Bell, Brown, Lucas and Warfield voting no. Representative Yardley abstained.

HOUSE BILL 239 Chairman Hall summarized bill and read from pertinent statutes. Representative Towe moved to amend bill on page 1, section 1, line 16, after the word "shall" by inserting the word "not" and be further amended on page 1, section 1, lines 21, 22, and 23 after the word "effect" by inserting the punctuation "." and deleting the words "or by the owner of one hundred per cent (100%) of the rights to any mineral interest upon the land in which such mineral ownership is vested.". Representative Yardley seconded. Motion to amend passed unanimously.

Representative Towe moved DO PASS AS AMENDED. Representative Greely seconded. Motion carried unanimously.

All business being conducted the meeting adjourned at 6:35 p.m.

JCH:pb

JOHN C. HALL, CHAIRMAN

Jan. 26, 1973

Statement presented for Upper Missouri Group Sierra Club.

While there may well be merit to an eminent domain law in hard rock mining situations in Montana we are against the employment of this eminent domain device to aid coal companies in acquiring strip minable Montana coal.

The alleged energy shortage is being used by the energy sellers to justify immense consumption rates of a non-renewable Montana resource. This rapid consumption of a non renewable resource at exhaustion jeopardizes future land uses for private gain, deserves careful considerations in all it's aspects for many reasons. The right to exercise eminent domain proceedings against owners of land surface by the coal mining companies to obtain the coal beneath only came into being by questionable, unfortunate circumstances. We believe it is not in the interest of good management of all resources of the area to permit public enforcement of the selling of important valuable, surface land uses to energy companies for ultra-destructive one-time use, of the energy contained over vast areas in a few strata below.

No true energy crisis has been demonstrated. This coal will not equal oil. If and when it is used, it should at least be with an efficient net- energy conversion ratio which is not now planned and with which degree of land reclamation attainment, which contrary to claims, is not now fully attainable. Lending the energy companies the public backing of eminent domain actions will only to forcefully gain title to surface ownership in coal or is

is not justifiable. In the interest of wise planning and use of Montana resources we urge that this right of eminent domain proceedure of land acquisition by the energy companies be repealed.

Please support House Bills 237, 238 and 239

Thank you,

Shirley A. Berg

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NORTHERN PLAINS RESOURCE COUNCIL
437 STAPLETON BUILDING
BILLINGS, MONTANA 59101
(406) 259-6114

Testimony presented to the House Judicary Committee on January 26, 1973.

Mr. Chairman and members of the committee, my name is Kit Muller. I am from the Northern Plains Resource Council, a regional coalition of farmers, ranchers, and conservationists who are concerned about the current and the impending development of the Fort Union coal deposits. I am going to speak to only one aspect of the eminent domain legislation that you are considering here today; namely, the extent to which mineral rights have been severed from surface rights in the state of Montana.

By far the largest single owner of mineral rights in our state is the federal government. Either directly or indirectly, the Bureau of Land Management is responsible for the administration of the mineral resources on approximately 38 million acres of land in Montana, a figure that is roughly equivalent to one-third of the total area of the state. Of this 38 million acres, the federal government controls approximately two-thirds of the surface rights. In all, 12 million acres of private surface are underlain by mineral resources administered by the Bureau of Land Management.

To look just at coal mineral rights, there are four major blocks of coal mineral right ownership in the state: the federal government, the State of Montana, the Northern Cheyenne Tribe and the Crow Tribe, and the Burlington Northern Railway.

[illegible]

According to the Bureau of Land Management, there are approximately 9.1 million acres of strippable coal reserves in eastern Montana, strippable given the existing technology and the [illegible] market for coal. 1.7 million

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acres, or a little over half of the total strippable coal reserves, are owned by the federal government. Approximately 88% of the surface rights on these 1.7 million acres are privately held.[2] Thus far the Bureau of Land Management has leased 36,232 acres of coal in eastern Montana. The surface rights on approximately 90-95% of this land are privately held.[3]

State of Montana

The State of Montana has leased 56,902 acres of coal mineral rights. Two percent (1,156.56 acres) of the surface involved is held privately. Applications are pending on an additional 7,219.41 acres of state coal. Of this, only 320 acres of surface are privately owned.[4]

Northern Cheyenne

The Cheyenne Tribe has granted prospecting permits for the coal mineral rights on 227,773 acres of land. The Tribal Council has also leased an additional 16,055 acres. As far as I know, all of the surface involved is either owned by the Cheyenne Tribe itself or is owned a member of the tribe.[5]

Crow

The Crow Tribe has granted prospecting permits for 291,555 acres. Of the surface involved, 19,563 acres or 6% is held by non-Indians. The Tribal Council has also leased 61,123 acres of coal mineral rights. Of this, 50% of the surface is privately owned by non-Indians.[6]

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References

1. Proceedings and Recommendations of the 1969 Governor's Conference on Mined-Land Reclamation and Montana Mining Law, compiled by S.L. Groff, State of Montana, Bureau of Mines and Geology, June 1970, p. 36

2. Ibid, p. 37

3. Public Land Digest, U.S. Department of the Interior, BLM Montana State office, p. 9

4. letter to Mr Frank Culver, Coal Task Force Co-ordinator, from Bob Duncan, Department of State Lands, Sept 28, 1972

5. Letter to Mr Fletcher Newby, executive director of the Montana Environmental Quality Council, from Maurice Babby, Billings area director of the Bureau of Indian Affairs.

6. Ibid

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Testimony
House Judiciary Committee
H. B. 237, H. B. 238, and H. B. 239
January 26, 1973

Three of the bills under consideration here today attack the newly crystallized problems of the Montana surface owner's lack of rights. For many of us landowners in Eastern Montana the problems of surface owner's rights as opposed to those of the mineral owner burst upon us with the shock and immediacy of an atomic bomb explosion in our own backyard about two years ago. When Consolidation Coal talked to Mother and me about two years ago, we asked our family lawyer about things like condemnation, and he was shocked to find it in the Montana Revised Code, although he was a competent attorney with about twenty years practice.

It seems that large numbers of us in Eastern Montana were induced to settle there by means of homestead processes and railroad solicitations mainly for fodder to keep the Indians out of the more settled areas to the East and to the West, not for any real concern for the future of the settlers. Now seventy years later most of us have found out that we are tenants at sufferance awaiting the pleasure of dispossession by the mineral interests.

I am sure that I can say that without exception none of us who own land in coal bearing areas would have settled, paid good money, and invested our lives, our hopes and our love in a land which we even suspected would be destined for strip mining. If a buyer suspects land is to be stripped, why bother to buy it from either the railroad or any other owner? Any reasonable man who wanted to buy land for agricultural purposes would spend his money for land he could keep, not lose. I know that my father never envisioned such a thing when

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he was acquiring our ranch. I never heard coal or strip mining mentioned while I was growing up in connection with our ranch. It was not until four years after his death that Consolidation Coal brought the prospect of strip mining to our Bull Mountain ranch in the spring of 1970. I am sure that my experience is not dissimilar from those of many other people in Eastern Montana who are now faced with the prospect of coal development by strip mining.

For these reasons I think that H. B. 237 merely codifies the intentions in the minds of the parties during the time that the mineral reservations were made which are now causing so much distress. I would bring to the attention of the committee a case styled Wilkes-Barre Township School District v. Corgan, 403 Pa. 333, 170 A 2d 97, (1961), which deals with a situation somewhat similar to our present situation. The passage and approval of H. B. 237 would ease a lot of minds in Eastern Montana and would enable some of us who are faced with strip mining and coal companies to make a decision on whether it is worthwhile to make improvements on our ranches, to put a new roof on the house, to rebuild a barn that needs it, or to improve our watering systems and finish developments that we started pre-coal, or whether we should spend our energies to see if there is somewhere else we can go---away from strip mining. H. B. 237 would be a great help in returning hope and a reason for people who own land in the coal bearing areas to continue their activities with initiative.

In relation to H. B. 238, I think that this bill proposes a change in an area where change is due. To reiterate ancient history,

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sub-paragraph 15 of Sec. 93-9902, R. C. M. was added in 1961 for the purpose of aiding ACM in its prosecution of the Berkley pit activities. In an attempt to aid one special interest, the state opened the whole of Montana to the threat of massive disturbance. In my opinion sub-section 15 represents nothing more than corporate socialism. There is presently nothing safe in this state; not churches nunneries, monasteries, cemeteries, schools, hospitals, rest homes, dwelling-houses——not one single human refuge safe from the mineral interests.

It is time that the mining interests take their place with other business and commercial interests. Other businesses do not get every deal they want——only mining. I am sure that this committee will hear today the citations ad infinitum from the mining cases decided at the turn of the century stating that without mining the state of Montana would cease to exist.

I would remind this committee that a good many things have happened in Montana since 1900, not the least of which was the major settling of the entire Eastern half of the state, based on an entirely different economy. I think it is time that the legislature and the courts realize that agriculture has made a valuable and important contribution to the history and economy of the state as well, and that the people who are the producers of that contribution deserve equal rights to their property, too. After all, miners eat food and not metals or coal.

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By the state granting its power of eminent domain to a private industry, it has given them a powerful legal and psychological tool. When condemnation is threatened, most people are so disillusioned and skeptical about the efficacy and fairness of a court proceeding which has only one outcome that they just give in. A lawsuit is a hassle for almost any plaintiff or defendant, and when the outcome is that one can totally lose the land, regardless of the amount of money paid, it is hardly worth it.

When one deals with a coal company, there is no sense of dealing with an ordinary buyer, because they try to pull time limits on the landowners. They gave my Mother one week. They came to another widow in the Bull Mountains, who had been there since homestead days, on a Saturday in the middle of January when it was well below zero, and she was trying to feed her calves and keep the house warm. They told her she had until Monday to say "Yes", and told her she could go see her lawyer because he was back in town from the legislature. A neighbor was there, who told them they ought to be ashamed of themselves, and that they should get their feet off the stove and go back to town if they were not going to help her with the chores.

If it was not for sub-paragraph 15, the coal company could not have the authority to give a widow until Monday to sign papers that she did not want to sign.

I further second Mr. Bailey's point about the acquisition of land as a speculative hedge, and would further point out how sub-paragraph 15 would contribute to the ownership of large areas of Eastern Montana by huge outside corporations. The nation has been lamenting

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the decline of the family farm. I have heard other Montanans lamenting the acquisition of ranch land by doctors and oilmen seeking investments for their excess funds. With coal development facing Eastern Montana and sub-paragraph 15 unamended to use as a weapon, it may be that the remainder of Eastern Montana will end up in the hands of the outside corporations. I would further point out to this committee that the coal companies in the East have not made a habit of disposing of the land which they totally own and reclaim; therefore it is probable that the land which may be condemned will be permanently locked into corporate ownership. I do not think the legislature would find this to be a desirable situation.

In repsect to H. B. 239, I would recommend striking lines 16-23 beginning at "The provisions. . . .". This would have the effect of deleting this exception from the Land Owner Notification Act, and would make it apply equally to all mineral owners, irrespective of the amount of mineral owned. I see no rationale for this present exception. Why should bigger mineral owners be more of an exception than smaller mineral owners? A mineral owner owning 100% presently would not have to give notice, but a mineral owner owning 99% would have to give notice. The logic escapes me.

Submitted by,

Ellen Pfister Withers
on her own behalf and as a member
of the Bull Mountain Land Owners
P. O. Box 590
Billings, Montana

Laws and Resolutions

OF THE

STATE OF MONTANA

PASSED BY THE

Forty-third Legislative Assembly

In Regular and Special Session

Held at Helena, the Seat of Government of Said State,
First Regular Session
January 1, 1973 to March 10, 1973
Special Session
March 12, 1973 to March 24, 1973

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OF MONTANA

CHAPTER NO. 194

An Act to Amend Section 50-1305, R.C.M. 1947, to Require the Permission of the Owner of Surface Rights Before Mining or Prospecting Operations may be Commenced.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 50-1305, R.C.M. 1947, is amended to read as follows:

"50-1305. **Operations pursuant to prospecting permits or other agreements exempt.** The provisions of this act shall not apply where operations upon land are performed in accordance with the terms of a prospecting permit or a lease covering any mineral interest in said land or other valid agreements authorizing such operations which are in full force and effect."

Approved: March 7, 1973.

CHAPTER NO. 195

An Act to Amend Section 26-202.2, R.C.M. 1947, to Provide That Any Person Who Has Killed or Taken a Mountain Goat Shall Not Be Eligible to Apply for Another License for the Next Succeeding Seven (7) Years.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 26-202.2, R.C.M. 1947, is amended to read as follows:

"26-202.2. **Special licenses—tagging of carcasses of game animals.** (1) Special licenses authorized to be issued under the general powers of the *department of fish and game* may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a grizzly bear, moose, *mountain goat,* mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a grizzly bear, moose, *mountain goat or* mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year